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# Political Office and the Rule of Law in Plato's *Statesman*

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## **Abstract**

The article discusses the relation between political office (*archē*) and the rule of law in Plato's dialogue *Statesman*. Taking its starting-point from an observation about the *Statesman*'s peculiar approach to constitutional analysis, the article argues that what Plato is concerned to show is how the reconceptualisation of the role of law in government proposed in that dialogue has important implications for what we take the role of the institution of office-holding to be. While Greek political tradition held the main aim of *archē* to be the formal circumscription and control of official power within a constitutional order, Plato insists that it should primarily be understood as ensuring that the exercise of political power approximates, by means of law, the ideal rule by a political expert. The article ends by pointing out how this reading complements another recent discussion of office-holding in the *Statesman*.

## **Key words**

Plato – *Statesman* – rule of law – political office (*archē*) – tyranny – political expertise

## Introduction

The discipline of contemporary political theory has in recent years witnessed a growing interest in political institutions, as something worthy of philosophical reflection in their own right, rather than something that can simply be delegated to (empirical) political science.<sup>1</sup> The same trend can be observed in the study of ancient Greek political thought, in particular that of Plato and Aristotle.<sup>2</sup> The aim of the present article is to contribute to this exploration of the role and value of political institutions in Greek thinkers, focusing specifically on the relation between political office (*archē*) and the rule of law in Plato's dialogue *Statesman*. On the interpretation proposed here, Plato is concerned to show how the reconceptualisation of the role of law in government proposed in that dialogue has important implications for what we take the role of the institution of office-holding to be. While Greek political tradition held the main aim of *archē* to be the formal circumscription and control of official power within a constitutional framework, Plato insists that it should primarily be

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<sup>1</sup> Cf. the essays collected in J. Waldron, *Political Political Theory. Essays on Institutions* (Cambridge MA/London: Harvard University Press, 2016) (with references).

<sup>2</sup> This focus on institutions is particularly prominent in recent work by Melissa Lane: 'Political Expertise and Political Office in Plato's *Statesman*', in A. Havlicek, J. Jirsa and K. Thein (eds.), *Plato's Statesman. Proceedings of the Eighth Symposium Platonicum Pragense* (Prague: OIKOYMENH, 2013), pp. 51-79; 'Popular sovereignty as control of office-holders', in R. Bourke and Q. Skinner (eds.), *Popular Sovereignty in Historical Perspective* (Cambridge: Cambridge University Press, 2016), pp. 52-72; and 'Antianarchia. Interpreting political thought in Plato', in *Plato Journal* 16 (2017), pp. 59-74.

understood as ensuring that the exercise of political power approximates, by means of law, the ideal rule by a political expert.

## **1. Constitutional Analysis in the *Statesman***

I wish to begin by drawing attention to a feature of Plato's approach to constitutional analysis in the *Statesman* that has, as far as I know, been neglected by most commentators. In the course of an extended discussion of forms of *politeia* towards the end of the dialogue (*Plt.* 291a-303d), Plato's Eleatic Stranger famously develops a six-fold classification of non-ideal constitutions, over and above the one ideal form of government by an expert statesman. On this schema, rule by one, few and many are each divided into two kinds: those where the rulers are required to govern in accordance with the laws of the city (i.e., in this minimal sense, a 'rule of law'), and those where the rulers are not restrained by laws (297e1-3; 302c-e). The law-bound forms of government are said to imitate the ideal form of government well, whereas the lawless ones imitate it badly (300c-301c). But in addition to this formal classification, law-bound democracy and law-bound oligarchy are also given separate treatment as part of an elaborate thought experiment in 298a-300a, intended by the Stranger to illustrate the inherent problems with the notion of rule in accordance with law, as opposed to rule by political expertise. Using the expertises of navigation and medicine as stand-ins for political expertise, he paints a vivid portrait of a city – it could be both a democracy and an oligarchy<sup>3</sup> – that decides that henceforth those who

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<sup>3</sup> References to democracy: 298c2-5 (popular assembly with full *isēgoria*); 298e7, 299a1, 300a3 (officials chosen by lot); 298d5, 299c2-3 (Athenian legal terminology). References to oligarchy: 298c3, e6 (a council of the rich); 298e13-299a1 (juror selection by *prokrisis*); 300a3 (election of officials).

sail ships and heal patients are to practice their respective expertises in strict accordance with a set of laws, allowing for no deviation or exception whatsoever (298a1-e3). As the Stranger's interlocutor, Young Socrates, duly recognises, this would be an utterly foolish way of practising any expertise, including, it is implied, the expertise of politics (299e6-10).

The passage to which I would like to draw attention comes precisely at this juncture in the argument. As soon as Young Socrates had been made to agree that the exercise of sailing, healing or any other expertise in strict accordance with laws would be ridiculous, the Stranger turns around and adds a further consideration:

But what about the following consideration? If we were to compel each of the things we have just mentioned to be done according to written rules, and the person who has been elected or has been appointed to office by lot, on the basis of chance [τὸν χειροτονηθέντα ἢ λαχόντα ἐκ τύχης], to oversee these written rules of ours, but this person were to take no notice of what is written down, for the sake of either profiting in some way or of doing some personal favour, and were to undertake to do different things, contrary to these, when he possesses no knowledge, would this not be an evil still greater than the previous one? (300a1-7; trans. Rowe<sup>4</sup>).

What commentators usually focus on in this passage is the Stranger's sudden shift in general orientation, away from the dangers of law and towards the dangers of lawlessness. As a consequence, what has been less often remarked upon is his description of how lawlessness manifests itself *institutionally* in the lawless city. The

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<sup>4</sup> C. J. Rowe, *Plato: Statesman* (Warminster: Aris and Philips, 1995).

passage picks up on the preceding account of the law-bound city, which the Stranger describes as entrusting the job of sailing ships and healing patients in accordance with the laws to political office-holders (ἄρχοντες, 298e5; cf. e7-8; e12), chosen either from the wealthy or the whole people depending on the constitution (e6-7) and subject to accountability requirements at the end of their tenure (298e11-299a7). It is one of these political officials who is now imagined to disregard and violate those laws, from motives of profit or favouritism and without possessing the required expert knowledge.<sup>5</sup> Now, the Stranger's suggestion that a city comes to be ruled in a lawless way when its officials act in violation of the laws makes some sense in the case of oligarchy. After all, political power in Greek oligarchies was traditionally exercised primarily by strong political offices.<sup>6</sup> But it seems to fit the case of democracy

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<sup>5</sup> Friedo Ricken suggests that the official mentioned in 300a3-4 is one of the members of the law courts set up to scrutinise the conduct of the practitioners of navigation and medicine, not one of those practitioners themselves (*Platon. Politikos* (Göttingen: Vanderhoeck und Ruprecht, 2008), p. 199). His argument is that the mode of selection described in 300a3-4 fits better with 298e13-299a1 ('whether from the rich or from the whole people, whoever has office assigned to him by lot') than with 298e6-7 ('either of rich men on the basis of preselection or again those chosen by lot from the whole people together'). But it is not clear whether the reference to the lot in 298e7 is meant to apply to both oligarchy and democracy or to the latter only (cf. Rowe, *Statesman*, p. 288 *ad loc*). And at any rate, the use of the singular in 300a3-4 strongly suggests that we are to think of one of the practitioners specifically.

<sup>6</sup> M. H. Hansen, *The Athenian Democracy in the Age of Demosthenes* (Oxford/Cambridge, MA: Blackwell, 1991), p. 228. Cf. J. Ober, 'The Original

distinctively less well. After all, Plato himself elsewhere tends to treat manifestations of the assembled people, not its political officials, as the origin and chief agent of lawlessness and anarchy in democracy (e.g. *Resp.* 492b-c; *Laws* 701a-c); and in what was perhaps the most notorious Athenian example of democracy acting in violation of the laws it was precisely the popular assembly itself, not some official, who was the villain. Following the sea-battle of Arginusae in 406 BCE, a whole group of generals were illegally denied individual trials and sentenced to death *en bloc* in the course of a single assembly meeting. When in the course of the debate a certain Euryptolemus attempted to prevent the question of collective guilt from being put to the vote in violation of the law, the assembled people are famously reported by Xenophon to have angrily shouted that ‘it would be monstrous if the people were to be prevented from doing whatever they wished’ (Xen. *Hell.* 1.7.12; cf. Pl. *Apol.* 32b-c). Against this evocative background, the Stranger’s portrayal of lawless democracy as, specifically, a democracy ruled by lawless officials appears strained and artificial, leaving out quite a lot.<sup>7</sup>

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Meaning of ‘Democracy’: Capacity to Do Things, not Majority Rule’, in *Constellations* 15:1 (2008), pp. 1-9 at pp. 5-6.

<sup>7</sup> The Stranger might at first glance seem to recognise the role of the assembled people in lawless democracy when he shortly afterwards refers to constitutions in which ‘some one man *or some multitude* [πλῆθος ὁτιοῦν]’ attempts to rule in a way that is contrary to the laws (300d4-6; cf. c2-3). But the term *plēthos*, here, need not be taken as a reference to the assembled people specifically. It can also be read as simply part of a shorthand reference to the general constitutional contrast between a rule of one and a rule of the multitude (cf. its use in 291d), without specification as to how the rule of the *plēthos* manifests itself institutionally in the latter case. This way of

Now, one might think that this is to stretch the implications of the passage in 300a1-7 beyond what it can bear. After all, as the references to both oligarchic and democratic institutions in the preceding passage show, the Stranger's intention at this point in the argument is to make a general argument about the importance of law-bound government in any political system, not to explain how the rule of law breaks down in some particular system. So the fact that his actual account of that breakdown in 300a1-7 emphasises the role of office-holders, as opposed to, say, assemblies or law courts, may be intended by him as nothing more than an example of how the rule of law might break down in some systems, rather than a general account of how it breaks down in all systems. But a later passage confirms that the Stranger does in fact have democracy, too, in mind when he portrays the lawless city as one that is governed by lawless office-holders. In his final ranking of non-ideal constitutions, he argues that democracy is the best of the lawless and the worst of the lawful *politeiai* (303a4-b5). The reason is, as he explains, that 'the rule of the multitude [τοῦ πλήθους] [...] we may suppose to be weak in all respects and capable of nothing of any importance either for good or bad as judged in relation to the others, because of the fact under it the offices [τὰς ἀρχὰς] are distributed in small portions among many people' (303a2-6; trans. Rowe, modified). This characteristic of democracy is clearly meant to apply to both law-bound *and lawless* forms of democracy, since it is what explains their relative position in the ranking of constitutions. Lawless democracy is the least bad among lawless constitutions precisely because in it, too, political power is shared among many offices, rather than concentrated in a few or one (as in

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understanding the phrase, then, would not imply a departure from the Stranger's preceding account of lawless democracy as ruled by political office-holders specifically.



oligarchy or monarchy). But again: there is something surprising, and puzzling, about the Stranger's choice of analysis, which focuses so exclusively on the role of political officials.<sup>8</sup>

It is from this observation about the *Statesman's* peculiar approach to constitutional analysis that I take my starting-point in this article. What is it about Plato's argument in that dialogue that leads him to adopt a mode of political analysis that focuses so one-sidedly on the role of political officials in government, even at the price of seriously distorting (by his own standards) his portrayal of lawless democracy? My suggestion will be that Plato is trying to tell us something about the relation between rule of law and the traditional Greek institution of office-holding. As I will argue in Section 2, the Stranger's interlocutor, Young Socrates, is portrayed as the representative of a conventional view of the character of law-bound government, as aiming first and foremost to limit official power and prevent the emergence of unrestrained 'tyrannical' rule. On this view, law-bound government becomes closely associated with a rule by offices (*archai*), characteristically subject to a number of institutional limitations and forms of regulation. What motivates Plato's distinctive choice of analytic model in the *Statesman*, I propose in Section 3, is a desire to show how a proper understanding of the role of law in government, as an approximation to the ideal rule of knowledge, rather than the prevention of tyranny, forces us to

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<sup>8</sup> Interestingly, Melissa Lane also notes the distinctive focus on political offices in the Stranger's constitutional analysis of democracy, but she does so instead on the basis of the Stranger's use of terminology in 291d7-8. Here, democracy is defined as ἡ τοῦ πλῆθους ἀρχή, that is, as a regime formed from the *-archein* root like oligarchy and monarchy, which, following Ober, signifies a specific focus on distribution of offices (Lane, 'Political Expertise', pp. 78-79; cf. Ober, 'Original Meaning', pp. 3-9).

fundamentally rethink the relation between rule of law and the institution of office-holding. Political office is central to rule of law, not so much because it formally circumscribes the power of the rulers within a constitutional order, but primarily because it helps ensure that the exercise of political power approximates, by means of a set of substantive laws, the ideal rule by a political expert. The fourth and final section shows how this reading in turn complements the results of another recent study on Plato's conception of office-holding in the *Statesman*.

## **2. Office-holding and Rule of Law in Greek Political Tradition**

Young Socrates, the Stranger's main interlocutor in the *Statesman*, is often held out as nothing more than a passive and docile yes-man, who simply nods his assent to whatever the Stranger puts in front of him. But at one point in the dialogue he does in fact intervene in a significant way to register his dissatisfaction with something the Stranger says. The context is the first part of the discussion of political constitutions, where the Stranger famously makes the radical suggestion that expert knowledge (*technē* or *epistēmē*) constitutes the sole defining trait of good government, and that, by implication, traditional criteria, such as consent of the ruled, adherence to the laws, and the wealth of the rulers, are irrelevant to its correctness (293a-e). It is at this point that Young Socrates pushes back. While he agrees with most of what the Stranger said, the young man really does not like the thought of 'rule without laws' (ἄνευ νόμων [...] ἄρχειν, 293e8-9). As many commentators have noted, Young Socrates' comment reveals his attachment to a traditional constitutionalist position, familiar from much Greek political thought.<sup>9</sup> On this view, subordination of the rulers to a

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<sup>9</sup> E.g. J. de Romilly, *La Loi dans la Pensée Grecque* (Paris: Les Belles Lettres, [1971] 2002), p. 189; C. Gill, 'Rethinking Constitutionalism in *Statesman* 291-303', in C. J.

legal and political order was an essential feature of what the Greeks understood by good government. By contrast, the rule by someone wielding power independently of the established political order and without any of its institutional checks or regulation was associated with tyranny.<sup>10</sup> Aristotle makes this fundamental point succinctly in a passage from the *Rhetoric*, as he goes through the characteristic features of different political constitutions that a speaker needs to know in order to be rhetorically effective: ‘In a monarchy, as its name indicates, one alone is supreme over all: that which is according to some ordering [κατὰ τάξιν τινὰ] is a kingship, whereas that that which is unbounded [ἄόριστος] is a tyranny’ (*Rhet.* 1365b37-66a2). The widespread and deeply ingrained aversion to such unbounded, ‘tyrannical’ rule reflected a characteristically Greek mistrust of absolute power and its corrupting influences on the ruler.<sup>11</sup> But it was also a function of the high premium placed on the values of equality and freedom in the Greek political tradition. In the old aristocratic regimes, the rule of a tyrant, appropriating absolute power for himself within the city, had long

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Rowe (ed.), *Reading the Statesman* (Sankt Augustin: Akademie Verlag, 1995), pp. 292-305 at pp. 292-3; A. Laks, *Mediation et Coercition. Pour une Lecture des Lois de Platon* (Villeneuve d’Ascq: Septentrion, 2005), p. 98; and Ricken, *Politikos*, p. 187.

<sup>10</sup> H. Berve, *Die Tyrannis bei den Griechen* (München: CH Beck’sche Verlagsbuchhandlung, 1967), pp. 190-206; pp. 352-5; V. J. Rosivach, ‘The Tyrant in Athenian Democracy’, in *Quaderni Urbinati di Cultura Classica* 30:3 (1988), pp. 43-57 at p. 44; and S. Lewis, *Greek Tyranny* (Exeter: Bristol Phoenix Press, 2009), p. 2; p. 10.

<sup>11</sup> Cf. Pl. *Laws* 691c-d; 713c (the Athenian Stranger’s comments seem intended to reflect the conventional Greek attitude). Cf. S. C. Todd, *The Shape of Athenian Law* (Oxford: Oxford University Press, 1993), p. 112 (speaking of Athens).

represented an affront to the sense of a basic political equality among the members of the traditional social elite.<sup>12</sup> With the advent of democracy, the notion of equality was extended to include the entire citizen-body and came to be understood as a precondition for political freedom. The fundamental social and legal distinction between slaves and free men in Greek society was reworked and transferred onto the political sphere, and the notion of being ruled by a tyrant, who can do whatever he wishes to anyone at anytime, came to be perceived as the paradigm of bad government, as reducing free men to the precarious status of slaves, subject to the arbitrary whims of their master.<sup>13</sup>

That Young Socrates' misgivings about 'rule without laws' reflect this traditional Greek attitude to government has, as I said, often been noted. But what has less often noted is how his comment also thereby hints at a certain implicit expectation of what proper, law-bound government would look like from an institutional point of view. In Greek political thinking, the tyrant's characteristic position of power outside and independently of the established political order was generally understood, implicitly or explicitly, in contrast with a constitutional system

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<sup>12</sup> R. Osborne, *Greece in the Making* (London: Routledge, 1996), pp. 190-193; K. A. Raaflaub, 'Equalities and Inequalities in Athenian Democracy', in J. Ober and C. Hedrick (eds.), *Dēmokratia. A Conversation on Democracies, Ancient and Modern* (Princeton: Princeton University Press, 1996), pp. 139-174 at 184.

<sup>13</sup> K. A. Raaflaub, *The Discovery of Freedom in Ancient Greece* (Chicago and London: The University of Chicago Press, 2004 [German ed. 1985]). Cf. Rosivach, 'The Tyrant', p. 54.

designed to impose limitations on the powers of individual rulers.<sup>14</sup> In a Greek context, such a system traditionally took the form of a rule by constitutional offices (*archai*), whose powers were famously subject to various forms of institutionalised limitations and regulations.<sup>15</sup> One important context in which we can observe how office-holding functioned as a counter-image to tyranny in this way is in discussions of political accountability. As is well-known, elaborate institutional mechanisms for ensuring the accountability of office-holders (*euthunai*) were characteristic of many *poleis*, especially democratic ones like Athens.<sup>16</sup> By contrast, as Aristotle notes in book 4 of the *Politics* (in a chapter on tyranny), it is characteristic of the tyrant to be ‘unaccountable’ (ἀνυπεύθυνος, *Pol.* 1295a20). Unlike the official who is required to render an account of his time in office at the end of his tenure, the tyrant answers to nobody.<sup>17</sup> This specific aspect of the tyrant’s extra-constitutionality is also recognised by Herodotus. The Persian nobleman Otanes, in the famous Constitutional Debate,

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<sup>14</sup> On this important constitutional orientation in the Greek conception of rule of law see E. M. Harris, ‘Solon and the Spirit of Greek Law’, in *Democracy and the Rule of Law in Classical Athens* (Cambridge/New York: Cambridge University Press, 2006), pp. 3-28. Harris helpfully compares this Greek approach to law and government to that found in Near Eastern law codes, such as those of Hammurabi and Lipit-Ishtar.

<sup>15</sup> Cf. Osborne, *Greece*, pp. 192-193; Harris, ‘Spirit of Greek law’, pp. 14-22. Aristotle explains in several places in the *Politics* how tyrants had originally emerged in the Greek world as constitutional kings or important office-holders who, for some reason or another, decided to disregard the specified terms of their office and assume extra-constitutional power (*Pol.* 1305a7-21; 1310b18-26).

<sup>16</sup> Hansen, *Athenian Democracy*, pp. 218-224.

<sup>17</sup> Cf. Rosivach, ‘The Tyrant’, p. 54.

rhetorically asks how monarchy, which he straightforwardly equates with tyranny, can be a good thing ‘when the ruler can do what he wants without being held to account [ἀνευθύνῳ]’ (3.80.3; the monarch as tyrant in 3.80.4); and he explicitly contrasts this aspect of the tyrant with the democratic practice of holding political office-holders to account (3.80.6).<sup>18</sup>

However, there is another feature of traditional *archē* that perhaps most clearly illustrates how the institution functioned as a means of circumscribing official power and preventing unrestrained ‘tyrannical’ rule. This is the principle of rotation in political offices, well known from many Greek *poleis*: the tenure of officials should be limited and there should be regulations governing how often and how many times the same citizen can hold the same office.<sup>19</sup> Aristotle explicitly points to the principle of rotation as a bulwark against the potentially tyrannical accumulation of power in one or a few persons (*Pol.* 1308a19-24); and the elaborate anti-tyranny law from third century BCE Iliion explicitly includes a provision allowing for the prosecution of ‘anyone who serves as general or holds any other office for a second time’ (ἐὰν δέ τις τὸ δεύτερον [σ]τρατηγήσῃ ἢ ἄλλην ἀρχὴν ἄρξῃ, I.Iliion 25. II. 71-73 = Frisch

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<sup>18</sup> On the tyrant as the paradigm of unaccountability in Greek political thought, see K. Hoekstra, ‘Athenian democracy and popular tyranny’, in R. Bourke and Q. Skinner (eds.), *Popular Sovereignty in Historical Perspective* (Cambridge: Cambridge University Press, 2016), pp. 15-51. Cf. Rosivach, ‘The Tyrant’, p. 54.

<sup>19</sup> E.g. P. Fröhlich, ‘Governmental checks and balances’, in H. Beck (ed.), *A Companion to Ancient Greek Government* (Chichester: Wiley-Blackwell, 2013), p. 295.

1975).<sup>20</sup> Importantly, as the exclusively procedural orientation of the rotation principle clearly shows, the focus was on the limitation of official power as such, rather than on ensuring adherence to certain substantive principles of good government. As Robin Osborne writes about the earliest inscribed law to survive from Greece, specifying the principles of rotation that applied to the official from Dreros known as the *kosmos*, ‘this law marks a concern to define the limits of authority in the city, and to declare that granting powers to an officer is not the same as granting them to an individual. It is not what the *kosmos* does when in office that is in question, but the limits to that office’ (*Greece*, p. 186).

Of course, the role of the institution of office-holding in Greek political theory and practice cannot be reduced to this formal aim of limiting the power of individual rulers and avoiding tyrannical power. Political accountability measures such as the Athenian *euthunai*, for instance, can be approached and understood, not only as a mechanism for limiting individual power by subordinating it to a constitutional order, but also as a mechanism for ensuring the conformity of officials to certain substantial norms or rules of governmental behaviour. But given the prominent role of the ‘unrestrained’ tyrant as the counter-image of good government in the Greek imagination, it is not surprising that the formal or procedural limitations on official power, such as rotation in office, were perceived as particularly fundamental to the rule of law.<sup>21</sup> A clear articulation of the idea can be found in Aristotle’s *Politics*

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<sup>20</sup> For discussion of the provision and its context see now D. Teegarden, *Death to Tyrants! Ancient Greek Democracy and the Struggle against Tyranny* (Princeton: Princeton University Press, 2013), pp. 188-9.

<sup>21</sup> As Lynette Mitchell points out, it was first and foremost by subordination to rotation and similar constitutional regulations that Greek rulers of the archaic and

where it is precisely the rotational principle of traditional *archē* that is most explicitly equated with law-bound government, in opposition to tyrant-like rule. The context is the discussion, in Book 3, of the figure of the absolute king ‘who acts solely in accordance with his own will’ (1287a1-2) and, in this respect at least, is understood to resemble the tyrant (1295a18-19). Against the idea of such absolute kingship, Aristotle reports a widespread opinion according to which there is something unnatural about having a single absolute ruler in a political community that is made up of citizens who enjoy equal political status and who ought to enjoy equal political rights. ‘This is why’, he continues, ‘it is just for them [citizens who are equal] to rule no more than they are they are being ruled, and, therefore, to do so in turn. But this is law [νόμος]; for order [τάξις] is law. And it is preferable that the law should rule, rather than some one person’ (1287a16-20; trans. Reeve, modified.<sup>22</sup>).<sup>23</sup> What is striking about this passage is how closely it associates the principle of rotation in office with a rule of law. A system of ‘ruling and being ruled in turn’ is understood by Aristotle, not only as a positive expression of the values of equality and political freedom, but also, negatively, as a constitutional means to limit the powers of

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classical period sought to legitimize their position of power as a ‘rule under law’ (*The Heroic Rulers of Archaic and Classical Greece* (London/New York: Bloomsbury, 2013), p. 126).

<sup>22</sup> C. D. C. Reeve, *Aristotle. Politics. A new translation* (Indianapolis: Hackett, 2017).

<sup>23</sup> I take it that Aristotle is here simply reporting a conventional Greek preference for the rule of law. Whether he himself shares that preference has been the subject of controversy, and any answer will depend on how we interpret the extended discussion of rule of law vs. kingship in *Pol.* 3.15-18 as well as difficult passages on the ideal of ‘ruling and being ruled in turn’, such as *Pol.* 1261a30-b5 and 1277b7-16.



individual rulers by circumscribing their power within a comprehensive constitutional order (*taxis*) that they are all subject to.<sup>24</sup> In this sense, he suggests, a city in which the rulers are subject to a system of rotation is a city that is ruled by law, rather than men.

### **3. Rethinking Law and Political Office in the *Statesman***

With these considerations in mind, let us return to the *Statesman*. Young Socrates' qualms about 'rule without laws' (293e) turn out to play a pivotal role in the development of the argument of the dialogue. For they provide the Stranger with a welcome occasion for putting forward his own alternative understanding of law and its role in government, which sets the tone for everything that follows. Rather than a constitutional bulwark against unrestrained power, the laws are conceptualised by the Stranger as generalised, and thus less accurate, versions of the individual decisions made by a true political expert (294a-c; 294e-295a), whose central aim is to promote justice and well-being in the city (297a5-b3). As such, the laws are comparable to the workout schemes issued by an athletics trainer who cannot constantly supervise every individual athlete (294d-e), or like the prescriptions a doctor would leave to his patients if he had to be away for a period of time (295b-e).<sup>25</sup> As the Stranger's subsequent discussion brings out, this peculiar understanding of law has two important implications for our assessment of the value of law-bound government. On

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<sup>24</sup> Cf. P. L. P. Simpson, *A Philosophical Commentary on the Politics of Aristotle* (Chapel Hill and London: University of North Carolina Press, 1998), p. 187.

<sup>25</sup> On this reconceptualisation of law in the *Statesman* see Gill, 'Rethinking constitutionalism', pp. 292-297; and Z. Hitz, 'Plato on the Sovereignty of Law', in R. K. Balot (ed.), *A Companion to Greek and Roman Political Thought* (Chicester: Wiley-Blackwell, 2009), pp. 367-381 at pp. 371-372.

the one hand, it becomes clear why legal constraints on political power cannot be an essential feature of good government. After all, who would want to prevent a doctor from dispensing with his or her own prescriptions when the particular circumstances require it? But the Stranger's reconceptualisation of law also leads to a sort of recommitment to the rule of law on a new, revised basis (300a-303b).<sup>26</sup> This renewed commitment to law-bound government is not premised on the same traditional concern about avoiding unrestrained political rule that animated Young Socrates' original objection. Despite occasional allusions to the idea of law as a restraint on the excesses of individual rulers (298a1-b7; 300a4-5; 301b10-d3), the Stranger's argument in favour of rule of law ultimately turns on a concern for knowledge and expertise, rather than an 'Actonian' worry about the corrupting effects of power on human nature. The established and traditional laws of non-ideal cities, he explains, are also like the generalised instructions of an expert; based as they are on much cumulative experience (300b1-4), they represent 'imitations' or 'copies' (μιμήματα) of the kind of decisions that an expert ruler would make (300c5-7; cf. 301d8-e4 on the legislative efforts of non-ideal cities as 'following in the footsteps of the most true *politeia*'). This approximation to expertise embodied in law makes a rule of law the 'second-best' option under the non-ideal conditions of government by people who are not themselves political experts (300c1-3; cf. 297e4). As Christopher Gill puts it, 'the same factors that make it legitimate for the ruler with knowledge to rule without laws [...] also make it illegitimate for rulers without knowledge to do so' ('Rethinking constitutionalism', p. 296). To be governed in strict accordance with the laws becomes a second best option for non-ideal cities, not because the laws circumscribe

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<sup>26</sup> The analysis of the structure of the Stranger's argument in the rest of this paragraph owes much to Gill, 'Rethinking constitutionalism', pp. 292-297.

official power within certain clearly defined limits, but because they represent the closest such cities can get to genuine expert rule.<sup>27</sup>

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<sup>27</sup> Note that this account of the Stranger's argument in 300a-303b adopts the traditional view of scholars on the value of the laws of non-ideal cities in the *Statesman* (see e.g. J. B. Skemp, *Plato's Statesman* (London: Routledge & Kegan Paul, 1952), pp. 48-49; Gill, 'Rethinking constitutionalism'; J. Annas, 'Introduction', in J. Annas and R. Watersfield, *Plato. Statesman* (Cambridge: Cambridge University Press, 1995), pp. xvi-xx; T. Samaras, *Plato and Democracy* (New York: Peter Lang, 2002), p. 177). Some commentators have worried about the strikingly positive assessment of the laws of non-ideal cities implied by this interpretation. How can laws formulated and established by a community of non-experts be expected to successfully imitate (as far as laws can) the ideal rule by an expert statesman, given the Stranger's insistence on the importance of expert knowledge for good government? (For this criticism see in particular the work of Christopher Rowe, e.g. *Statesman*, pp. 15-18; 'The *Politicus* and other dialogues', in C. J. Rowe and M. Schofield (eds.), *The Cambridge History of Greek and Roman Political Thought* (Cambridge: Cambridge University Press, 2000), pp. 233-257 at 247-8; and 'Le traitement des constitutions non idéales dans le *Politique*', in *Les Etudes Philosophiques* 74 (2005), pp. 385-400.) But as I have argued elsewhere, the distinctive theory of political expertise developed in the *Statesman* is in fact compatible with attaching significant value to conventional political norms derived from the collective experience of a non-expert community (A. D. Sørensen, *Plato on Democracy and Political technē* (Leiden: Brill, 2016), pp. 90-99). On the Stranger's theory, the unique and all-important contribution of the political expert to good government consists in his ability to judge what is required in each particular case or

It is in the context of this new understanding of the role of law in government, I suggest, that we should understand the Stranger's distinctive approach to constitutional analysis in his discussion of non-ideal constitutions, with its exclusive focus on political offices. As I pointed out in the previous section, given that a central aim of law-bound government was traditionally taken to be the way it served to circumscribe the power of individual rulers within a political order, lawful government was closely associated with the institution of constitutional office. Hence, when Young Socrates voices his misgivings about the idea that good government can be government 'without laws', what he implicitly does is to express his preference for government by *archai*, as opposed to unconstitutional rule. This provides an illuminating context for understanding the Stranger's peculiar approach to constitutional analysis, with which we began. For note that a model of constitutional analysis that focuses exclusively on the role of political office-holders allows the Stranger to put into stark relief just how much his own approach to the value of rule of law differs from the traditional approach, as reflected in Young Socrates' initial objection. Prominent among the constitutional principles of office-holding was the principle of rotation in office, which, by limiting the tenure of the rulers and thus sharing the power among many, provided the city with a means of controlling its

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situation, *not* in his activity as a lawgiver, which on closer inspection turns out to be described in strikingly similar terms to the legislation process found in the second best city. So contrary to what its critics have claimed, the traditional interpretation does not threaten to collapse the crucial distinction between expert and layperson: while a community of non-experts might, under the right circumstances, be able to produce high-quality laws, they lack the capacity for particularised judgment which is what truly makes an expert an expert.

rulers and avoiding undue accumulation of power in one or a few persons. When the laws are understood as the generalised instructions of a political expert, rather than as a set of formal principles aimed at circumscribing the power of rulers, the fact that a city is governed by officials subject to a principle of rotation in office turns out to have no bearing on the question of whether it is ruled by law or not. As the Stranger shows in the passage on lawless democracy and oligarchy, even cities governed by annually rotating officials can be lawless (300a1-7). What determines whether a city is governed in a law-bound or lawless way depends solely on whether those who rule – whoever they are and for however long they rule – follow the laws or not. By contrast, any formal or procedural circumscription of the power of the rulers, for instance in the form of a principle such as rotation, will, as such, simply have the effect of making the government of the city less efficient in its pursuit of either a lawful or a lawless course of action. This is precisely the point of the Stranger's remarks in 303a about the characteristic democratic tendency to distribute offices to many. A political government in which 'the offices are distributed in small portions among many people' can be both law-bound and lawless; but either way it will be 'weak in all respects and capable of nothing of any importance either for good or for bad' (303a3-6). This same line of argument also leads to a reconceptualisation of the badness of tyranny. The Stranger agrees with popular Greek opinion that tyranny is the worst form of government (302e12 with d1), but, on his analysis, this is precisely not because tyranny is lawless to a higher degree than other constitutions, such as lawless oligarchy and lawless democracy, in which power is institutionally shared among more people who rule in turn. Rather, it is because the tyrant, being the sole ruler of the city, can more efficiently pursue a policy that is contrary to the laws.

My suggestion, then, is that the Stranger's striking emphasis on office-holding in his analysis of non-ideal constitutions is motivated by his desire to bring out the implications of his new approach to law and the role of law in government, in particular to show how that new approach requires us to rethink the relation between rule of law and the institution of office-holding. When the laws are understood as the substantive guidelines of an expert, rather than formal principles aimed at limiting official power, law-bound government comes to have less to do with how much power the rulers wield and more to do with what the rulers do. The emphasis on office-holders in the Stranger's analysis of both law-bound and lawless constitutions is Plato's way of calling attention to this point. However, this is not to say that the Stranger's analysis of non-ideal constitutions completely severs the conceptual link, so strong in Greek political imagination, between rule of law and the institution of office-holding. If we look again at the brief portrayal of lawless democracy and oligarchy in 300a, it is not entirely clear under what institutional circumstances the annually rotating official begins to disregard the laws. The Stranger simply asserts that he does so. But given the heavy emphasis on *euthunai* (official accountability processes) in the preceding account of the law-bound city (298e11-299a7), it seems reasonable to suppose that the Stranger imagines the lawless behaviour described in 300a as taking place in an institutional context where the strictness of the city's accountability requirements has somehow been relaxed. If this is so, then we can say that the Stranger does retain some link between rule of law and one of the central principles associated with office-holding, namely the principle of holding office-holders to account. But note that even here Plato seems to rethink, or at least theoretically sharpen, the idea of *euthunai* to make it fit his new conception of law as the guidelines of an expert. For Plato in the *Statesman*, the aim of *euthunai* is not

simply to circumscribe the potentially tyrannical power of the rulers by making them ‘answerable’ to a wider political community, as it is likely historically to have been.<sup>28</sup> Rather, the process of *euthunai* is understood in that dialogue along strongly legalistic lines: the aim is to make the rulers accountable specifically and exclusively to a set of fully specified laws that, albeit in imperfect because general form, imitate the rule of an ideal expert statesman, in the same way as the general instructions found in a medical handbook imitate the individual instructions issued by the doctor himself. Again focus is on the rule of law as an approximation to ideal rule of knowledge, rather than control of office-holders and the prevention of tyranny.

#### **4. Rule of Law in the Ideal City**

I would like to close by connecting this conclusion to another recent study of the institution of office-holding in the *Statesman*. Melissa Lane has suggested that the dialogue has more to say on the important constitutional question of the character and distribution of offices in the ideal city than it has traditionally been credited for.<sup>29</sup> Her argument begins from the attractive proposal that the offices, *archai*, entrusted by the expert statesman to selected citizens in 311a1-2 are precisely those of the general,

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<sup>28</sup> See e.g. D. D. von Dornum, ‘The Straight and the Crooked: Legal Accountability in Ancient Greece’, in *Columbia Law Review* 97:5 (1997), pp. 1483-1518.

<sup>29</sup> Lane, ‘Political expertise’. Lane’s argument is meant as an important qualification to Malcolm Schofield’s contention that the *Statesman*, while rich in its analysis of political expertise itself, suffers from ‘a degree of impoverishment’ when it comes to its approach to other aspects of politics, in particular constitutional questions concerning the political and social arrangements of the ideal city (cf. M. Schofield, *Plato. Political Philosophy* (Oxford: Oxford University Press, 2006), pp. 173-175).

rhetor, and judge, whose distinctive forms of expertise are discussed in 303d-305e and said to be ‘most precious and related’ to that of the expert statesman himself (303e9-10). If this proposal is accepted, she points out, what we find in the *Statesman*’s account of these three offices and their relation to statesmanship is a fundamental reconceptualisation of the traditional *archai* characteristic of democratic Athens and thus of the Athenian constitutional structure itself. On the one hand, just as in Athens, the roles of general, rhetor and judge play an important political role in the ideal city of the *Statesman*, where they represent the highest offices in the state. On the other hand, however, the dialogue radically rethinks the principle by which those important offices are distributed. In Athens, the positions of general, rhetor and judge were (in principle) accessible to all citizens regardless of background, either by means of popular election, self-selection or use of the lot. By contrast, Lane points out, Plato in the *Statesman* insists that they should be understood as the proper domain of expert knowledge and that they must therefore be assigned strictly on the basis of technical competence.

Lane herself does not link this revised understanding of the nature of political office in the *Statesman* to the dialogue’s discussion of law and government. But we should note that Plato in fact gives it an essential role to play in his account of rule of law in the ideal city. As he has the Stranger explain to Young Socrates, law-bound government will have a place even in the ideal city ruled by an expert statesman. For whenever the statesman is not himself able to direct things personally, in accordance with his expertise, he will order the city to be governed in strict accordance with a set of laws instead (294a-295b). As we learn later in the discussion of the three forms of expert knowledge ‘most precious and related’ to statesmanship, the task of ensuring



this strict observance of the legal order handed down by the statesman is described as the main function of the office of the judge and his distinctive form of expertise:

THE ELEATIC STRANGER: Well then, does this capacity [i.e. δικαστική, cf. 303e10] extend to anything more than taking over from the legislator-king all those things that are established as lawful in relation to contracts, and judging with a view to these the things that have been prescribed as just and unjust, providing its own particular excellence in virtue of the fact that it would not be willing to decide the complaints of one citizen against another contrary to the prescription of the legislator through being overcome by gifts of some sort, or fears, or feelings of compassion, or again by enmity or friendship?

YOUNG SOCRATES: No, the function of this capacity is roughly speaking as extensive as you have said.

THE ELEATIC STRANGER: In that case we discover the power of the judges too not to be that belonging to the king, but to be a guardian of the laws [νόμων φύλακα] and subordinate to that other capacity.

(305b4-c7; trans. Rowe 1995)

The expert judge with his distinctive capacity, as described here, fulfils a very similar role, in the ideal city, to the one fulfilled by the annually rotating official in the Stranger's account of the law-bound democracy/oligarchy in 298a-299e. In both cases, the task of the official is to strictly and impartially enforce a set of pre-established laws, without himself being authorised to dispense with or correct those

laws in any way.<sup>30</sup> This coincidence in political function is reflected in a striking verbal echo. Already in 292a, a democratic government that adheres to the laws in the way later described in the Stranger's thought experiment has been referred as 'accurately guarding the laws' (τοὺς νόμους ἀκριβῶς φυλάττον, 292a2). It is the same conspicuous phrase we find the Stranger making use of in his account of the role of *dikastikē* in the ideal city cited above: the capacity of the judge allows him to function as 'a guardian of the laws' (νόμων φύλακα) in his city. But note, importantly, that in the case of the expert judge it is perhaps even clearer how the relation between political office and rule of law has been wholly dislodged from the traditional understanding, on which the laws in question were first and foremost those formal and procedural limitations on official power embodied in the institution of *archē* itself. On the Stranger's account, the ideal city, when entrusted to expert judges in the absence of the expert statesman, will be a rule of law, not because the office of the

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<sup>30</sup> The scope of official authority might at first glance be thought more limited in the case of the judge, who is merely described as concerned with 'contracts' (τὰ συμβόλαια) and 'the complaints of one citizen against another' (τὰ ἀλλήλων ἐγκλήματα), i.e. with resolving disputes. But note that the Stranger repeatedly refers to the application of political expertise itself in a similarly limited way: the expert statesman directs his citizens 'in relation to justice and their contracts with one another' (τοῦ δικαίου πέρι καὶ τῶν πρὸς ἀλλήλους συμβολαίων, 294e10-295a1); and he 'always distributes to those in the city what is most just' (δικαιότατον ἀεὶ διανέμοντες τοῖς ἐν τῇ πόλει, 297b1). This feature of *politikē* in the *Statesman* presumably reflects the strong associative link between political and judicial authority familiar from traditional Greek political thought, cf. e.g. Hes. *Theog.* 80-92 (on the good king) and Hdt. 1.96-100 (on Deioces' rise to power).

judge itself functions as a formal check on his power, but rather because that office requires that those who hold it must possess the right kind of professional expertise: it is the application of the expert judge's 'own particular excellence', cashed out in terms of his capacity and disposition for judging correctly and impartially, that ensures that the city is governed in strict accordance with laws – those substantive laws that the expert statesman has laid down in imitation of his own individual instructions. In this specific sense, then, the institution of office-holding remains central to rule of law even in Plato's ideal city in the *Statesman*. But it is as an institution that has been conceptually revised and integrated into his consciously innovative understanding of what the role of law in government should be.<sup>31</sup>

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<sup>31</sup> Earlier versions of this paper were discussed with audiences in Uppsala (AGORA), Princeton (University Center for Human Values), and Copenhagen (Copenhagen Intellectual History Seminar). I am grateful for the helpful suggestions and criticism I received at these occasions. The paper also benefitted from written comments by Leo Catana (Copenhagen) and from the reports submitted by the two reviewers for *Polis*.